

EXHIBIT 21

**CONFORMED COPY
OF ORIGINAL FILED**
Los Angeles Superior Court

OCT 24 2005

John A. Clarke, Executive Officer/Clerk
By R. Arraiza, Deputy
R. Arraiza

MICHAEL J. HARTLEY (State Bar No. 189375)
LISA GILFORD (State Bar No. 171641)
SCOTT J. LEIPZIG (State Bar No. 192005)
WESTON BENSHOOF ROCHEFORT
RUBALCAVA & MacCUISH LLP
333 South Hope Street
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Attorneys for Plaintiff and Cross-Defendant
JAMES HARKESS

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

JAMES HARKESS,

Plaintiff,

v.

**TERRENCE QUINN aka TERRANCE LEE
QUATKEMEYER, and DOES 1 through 10,
inclusive,**

Defendants.

AND RELATED ACTIONS.

Lead Case No.: BC 311681

(Assigned for All Purposes to the
Honorable James R. Dunn – Dept. 26)

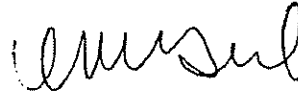
**NOTICE OF ENTRY OF FINAL
JUDGMENT IN FAVOR OF JAMES
HARKESS**

1 **TO: ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:**

2 PLEASE TAKE NOTICE that the Court filed and entered the Stipulation and
3 Order Re: Entry of Final Judgment on October 17, 2005. A true and correct copy is attached
4 hereto as Exhibit A.

5
6 DATED: October 24, 2005

MICHAEL J. HARTLEY
LISA GILFORD
SCOTT J. LEIPZIG
WESTON, BENSHOOF, ROCHEFORT,
RUBALCAVA & MacCUISH LLP

9
10 

11 Lisa Gilford
Attorneys for Plaintiff and Cross-Defendant
12 JAMES HARKESS

EXHIBIT A

COPY

ORIGINAL FILED

OCT 17 2005

LOS ANGELES
SUPERIOR COURT

MICHAEL J. HARTLEY (State Bar No. 189375)
LISA GILFORD (State Bar No. 171641)
SCOTT J. LEIPZIG (State Bar No. 192005)
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Attorneys for Plaintiff and Cross-Defendant
JAMES HARKESS

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

JAMES HARKESS,
Plaintiff,
v.

TERRENCE QUINN aka TERRANCE LEE
QUATKEMEYER, and DOES 1 through 10,
inclusive,
Defendants.

Case No.: BC 311681
(Assigned for All Purposes to the
Honorable James R. Dunn – Dept. 26)

STIPULATION AND [PROPOSED]
ORDER RE: ENTRY OF FINAL
JUDGMENT

AND RELATED CROSS-ACTION.

TO: THE HONORABLE JAMES R. DUNN, ALL PARTIES IN INTEREST, AND THEIR
RESPECTIVE ATTORNEYS OF RECORD:

Plaintiff and Cross-Defendant James Harkess (“Harkess”), Defendant and
Cross-Complainant Terrence Quinn aka Terrance Lee Quatkemeyer (“Quinn”), and
Defendants and Cross-Complainants James H. Smith (“Smith”) and Jeffrey Weinsten
 (“Weinsten”), as Trustees of the purported Windsor Trust, u/d/t dated June 21, 2002
 (“Windsor Trust”) (collectively the “Parties”), by and through their counsel of record, hereby
 stipulate as follows:

1. Quinn, on behalf of himself, and Smith and Weinsten on behalf of
 themselves and the Windsor Trust, hereby waive all rights to appeal or otherwise challenge

WESTON BENSHOOF ROCKEFORT RURALCAYA MACCUSH LLP
333 South Hope Street, Sixteenth Floor
Los Angeles, California 90071

the Court's Statement of Decision and Final Judgment (copies of which are attached as Exhibits A and B hereto) and stipulate to immediate entry of the Statement of Decision and Final Judgment as the final judgment of the Court.

2. Harkess hereby withdraws his memorandum for costs and waives his right to those costs as the prevailing party, so that all parties shall bear their own costs and attorneys' fees in this case.

IT IS SO STIPULATED.

DATED: Oct 10 September __, 2005


JAMES R. HARKESS, individually

DATED: September __, 2005

TERRANCE QUATKEMEYER,
aka TERRY QUINN, individually

DATED: September __, 2005

JAMES H. SMITH, individually

DATED: September __, 2005

JEFFREY WEINSTEN, individually

DATED: September __, 2005 THE WINDSOR TRUST

By: TERRANCE QUATKEMEYER,
aka TERRY QUINN
Its: Beneficiary

DATED: September __, 2005 THE WINDSOR TRUST

By: JAMES H. SMITH
Its: Trustee

the Court's Statement of Decision and Final Judgment (copies of which are attached as Exhibits A and B hereto) and stipulate to immediate entry of the Statement of Decision and Final Judgment as the final judgment of the Court.

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IT IS SO STIPULATED.

DATED: October __, 2005

JAMES R. HARKESS, individually

DATED: October 7th 2005

TERRANCE QUATKEMEYER,
aka TERRY QUINN, individually

DATED: October __, 2005

JAMES H. SMITH, individually

DATED: October __, 2005

JEFFREY WEINSTEN, individually

DATED: October 7th 2005

THE WINDSOR TRUST

By: TERRANCE QUATKEMEYER,
aka TERRY QUINN

Its: Beneficiary

DATED: October __, 2005

THE WINDSOR TRUST

By: JAMES H. SMITH

Its: Trustee

2

STIPULATION AND [PROPOSED] ORDER RE ENTRY OF FINAL JUDGMENT

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6 attorneys' fees in this case.

7 IT IS SO STIPULATED.

8
9 DATED: October __, 2005

10 _____
JAMES R. HARKESS, individually

11
12 DATED: October __, 2005

13 _____
TERRANCE QUATKEMEYER,
14 aka TERRY QUINN, individually

15 DATED: October 7, 2005

16 _____
17 JAMES H. SMITH, individually

18 DATED: October __, 2005

19 _____
JEFFREY WEINSTEN, individually

20
21 DATED: October __, 2005

THE WINDSOR TRUST

22 By: _____

23 TERRANCE QUATKEMEYER,
24 aka TERRY QUINN

Its: Beneficiary

25 DATED: October 7, 2005

THE WINDSOR TRUST

26 By: _____

27 JAMES H. SMITH

28 Its: Trustee

2

STIPULATION AND [PROPOSED] ORDER RE: ENTRY OF FINAL JUDGMENT

094191.1

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8
9 DATED: October __, 2005

10 _____
JAMES R. HARKESS, individually

11
12 DATED: October __, 2005

13 _____
TERRANCE QUATKEMEYER,
14 aka TERRY QUINN, individually

15 DATED: October __, 2005

16 _____
JAMES H. SMITH, individually

17
18 DATED: October 7, 2005

19 _____
TERRY WEINSTEIN, individually

20
21 DATED: October __, 2005 THE WINDSOR TRUST

22
23 By: _____
TERRANCE QUATKEMEYER,
24 aka TERRY QUINN
Its: Beneficiary

25 DATED: October __, 2005 THE WINDSOR TRUST

26
27 By: _____
JAMES H. SMITH
28 Its: Trustee

2
STIPULATION AND [PROPOSED] ORDER RE: ENTRY OF FINAL JUDGMENT

1 DATED: October 7, 2005

2 THE WINDSOR TRUST

3 By:  JEFFREY WEINSTEN
4 Is Trustee

5 ORDER

6
7 IT IS SO ORDERED. The clerk is directed to enter the Court's Statement of
8 Decision and Final Judgment as the final judgment in this case. Each party shall bear its own
9 costs and attorneys' fees.

10
11 DATED: OCT 17 2005

12 JAMES R. DUNN
13 HONORABLE JAMES R. DUNN
Judge of the Superior Court

14 APPROVED AS TO FORM:

15 DATED: October __, 2005

16 MICHAEL J. HARTLEY
17 LISA GILFORD
18 SCOTT J. LEIPZIG
19 WESTON BENSHOOF ROCHEFORT
20 RUBALCAVA & MacCUISH LLP

21 Michael J. Hartley
22 Attorneys for Plaintiff and Cross-Defendant
23 JAMES HARKESS

24 DATED: October __, 2005

25 THE LAW OFFICES OF PETER J. BABOS

26 Peter J. Babos
27 Attorney for Defendant and Cross-Complainant
28 TERRENCE QUINN aka TERRANCE LEE
QUATKEMEYER and Cross-Complainants JAMES H.
SMITH and JEFFREY WEINSTEN, as Trustees of THE
WINDSOR TRUST

1 DATED: October __, 2005 THE WINDSOR TRUST

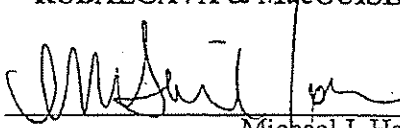
2
3 By: _____
4 JEFFREY WEINSTEN
5 Its: Trustee

6 ORDER

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10
11
12 DATED: _____
13 HONORABLE JAMES R. DUNN
Judge of the Superior Court

14 APPROVED AS TO FORM:

15 DATED: October 7, 2005
16 MICHAEL J. HARTLEY
17 LISA GILFORD
18 SCOTT J. LEIPZIG
19 WESTON BENSHOOF ROCHEFORT
20 RUBALCAVA & MACCUISH LLP
21 
22 Michael J. Hartley
23 Attorneys for Plaintiff and Cross-Defendant
24 JAMES HARKESS

25 DATED: October __, 2005 THE LAW OFFICES OF PETER J. BABOS

26 Peter J. Babos
27 Attorney for Defendant and Cross-Complainant
28 TERRENCE QUINN aka TERRANCE LEE
QUATKEMEYER and Cross-Complainants JAMES H.
SMITH and JEFFREY WEINSTEN, as Trustees of THE
WINDSOR TRUST

1 DATED: October __, 2005 THE WINDSOR TRUST

2
3 By: _____
4 JEFFREY WEINSTEN
5 Its: Trustee

6 ORDER

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10
11 DATED: _____
12 HONORABLE JAMES R. DUNN
13 Judge of the Superior Court

14 APPROVED AS TO FORM:

15 DATED: October __, 2005
16 MICHAEL J. HARTLEY
17 LISA GILFORD
18 SCOTT J. LEIPZIG
19 WESTON BENSHOOF ROCHEFORT
20 RUBALCAVA & MacCUISH LLP

21 _____
22 Michael J. Hartley
23 Attorneys for Plaintiff and Cross-Defendant
24 JAMES HARKESS

25 DATED: October 7, 2005 THE LAW OFFICES OF PETER J. BABOS

26 _____
27 Peter J. Babos
28 Attorney for Defendant and Cross-Complainant
TERRENCE QUINN aka TERRANCE LEE
QUATKEMEYER and Cross-Complainants JAMES H.
SMITH and JEFFREY WEINSTEN, as Trustees of THE
WINDSOR TRUST

EXHIBIT A

ORIGINAL FILED

AUG 18 2005

**LOS ANGELES
SUPERIOR COURT**

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

JAMES HARKESS,

Plaintiff,

v.

TERRENCE QUINN aka TERRANCE LEE
QUATKEMEYER, and DOES 1 through 10,
inclusive,

Defendants.

Case No.: BC 311681

**JUDGMENT IN FAVOR
OF JAMES HARKESS**

AND RELATED CROSS-ACTION.

This action came on regularly for trial before the Court on March 28, 2005, at 8:30 a.m. in Department 26 of the above court. Michael Harley and Scott Leipzig of Weston Benshoof Rochefort Rubalcava & MacCuish LLP appeared on behalf of Plaintiff and Cross-Defendant James Harkess ("HARKESS"). Mark Hathaway of Slater Hathaway LLP and Peter Babos of the Law Offices of Peter Babos appeared on behalf of Defendants and Cross-Complainants Terrance Lee Quatkemeyer aka Terrence Quinn ("QUINN") and James H. Smith, as Trustee of The Windsor Trust, dated June 21, 2002 ("SMITH" and "TRUST") and Jeffrey Weinstein ("WEINSTEN"), as Co-Trustee of the TRUST.

The Court having heard and considered testimony, documentary evidence, and arguments

1 presented by or on behalf of the parties, and having issued a Statement of Decision (hereinafter,
 2 "Decision"), hereby orders the following Judgment to be entered in favor of HARKESS consistent
 3 with the Statement of Decision, with specific reference to the following findings of the Court:

4
 5 (1) The purported TRUST "was not legally in existence and had no assets at the time
 6 of the transfer" of Windsor Holdings, LLC ("Windsor") from David Kaye ("Kaye") to HARKESS.
 7 (Decision, p. 1.) Any purported ownership of Windsor claimed by SMITH and WEINSTEN "is
 8 purely derivative based on their status as trustees of the Trust, and the court has found that the Trust
 9 was not legally in existence during the time of the transfer from Kaye to Harkess." (Decision, p.
 10 2.)

11
 12 (2) The transfer of Windsor from "Kaye to Harkess was effective to transfer ownership
 13 of Windsor to Harkess." (Decision, p. 1.) Windsor was formed in July 2001 and David Kaye
 14 became the managing member, and sole owner, of Windsor; Quinn set up the Windsor structure in
 15 such a way as to create apparent authority/ownership in Kaye; Harkess became the managing
 16 member, and sole owner, of Windsor upon transfer from Kaye in July 2003. The undisputed
 17 evidence presented by both sides, which constituted the underlying premise for the need for this
 18 Court to determine ownership of Windsor, was that since July 2001, Windsor owned Sanitec
 19 Worldwide, Ltd. ("Worldwide"), and Worldwide was the majority shareholder of Sanitec, Ltd.
 20 ("Limited").

21
 22 (3) QUINN and those acting on his behalf, including SMITH and WEINSTEN, "are
 23 barred by the equitable doctrines of unclean hands and equitable estoppel from asserting ownership
 24 in Windsor." (Decision, p. 2.) "In the exercise of its equitable powers, this court will not permit
 25 Quinn to now assert an ownership interest in Windsor." (Decision, p. 7.)

26
 27 NOW THEREFORE, IT IS HEREBY ADJUDGED AND DECREED THAT:
 28

1 (1) Judgment is entered FOR Plaintiff and Cross-Defendant HARKESS
2 and AGAINST Defendants and Cross-Complainants QUINN,
3 SMITH and WEINSTEN on Plaintiff's Complaint for Declaratory
4 Relief and on Defendants' Cross-Complaint for Declaratory Relief.
5 The Court declares that HARKESS is the sole owner of Windsor and
6 Windsor's assets, including but not limited to, Windsor's ownership
7 interests in Worldwide and Limited. Neither QUINN, SMITH,
8 WEINSTEN, nor any successor trustees or beneficiaries of the
9 purported TRUST have any right, title or interest in Windsor and/or
10 any Windsor asset, including but not limited to, Windsor's
11 ownership interests in Worldwide and Limited;

12
13 (2) QUINN, SMITH, WEINSTEN and the successor trustees and
14 beneficiaries of the purported TRUST, and each of them, as well as
15 anyone acting on their behalf or in concert with them (hereinafter,
16 "ENJOINED PARTIES"), are restrained and permanently enjoined
17 from claiming any right, title or interest in Windsor and/or any
18 Windsor asset, including but not limited to, Windsor's ownership
19 interests in Worldwide and Limited. The ENJOINED PARTIES are
20 specifically restrained and permanently enjoined from making any
21 representations that they have any ownership interest in or control
22

23 ////

24
25 ////

1 over Windsor and/or any Windsor asset, including but not limited to, Windsor's
2 ownership interests in Worldwide and Limited.

3
4 DATED: AUG 18 2005

5 **JAMES R. DUNN**

6 JAMES R. DUNN
7 Judge of the Superior Court
8
9
10
11
12
13
14
15
16
17
18
19
20
21
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23
24
25

26 JRD:cr
27 Harkess:jmt
28 8/18/05

EXHIBIT B

ORIGINAL FILED

AUG 18 2005

LOS ANGELES
SUPERIOR COURT

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

JAMES HARKESS,

Plaintiff,

v.

TERRENCE QUINN aka TERRANCE LEE
QUATKEMEYER, and DOES 1 through 10,
inclusive,

Defendants.

Case No.: BC 311681

STATEMENT OF DECISION

AND RELATED CROSS-ACTION.

The court finds FOR PLAINTIFF/CROSS-DEFENDANT AND AGAINST
DEFENDANTS/CROSS-COMPLAINANTS on Plaintiff's Complaint for Declaratory Relief and
on Defendants' Cross-Complaint for Declaratory Relief. The court declares that plaintiff James
Harkess ("Harkess" herein) is the rightful owner of Windsor Holdings, LLC, ("Windsor" herein)
and that defendants have no right, title or interest therein. Further, defendants, and each of them,
are permanently enjoined from claiming any right, title or interest in Windsor.

The court finds that the Windsor Trust ("Trust" herein) was not legally in existence and had
no assets at the time of the transfer of Windsor from David Kaye ("Kaye" herein) to Harkess.
Defendant Terrence Quinn aka Quatkemeyer ("Quinn" herein), in July 2001, through a series of

1
STATEMENT OF DECISION

1 companies and transactions, none of which bear his name or other indicia of his ownership,
 2 transferred ownership and apparent authority to Kaye as managing member of Windsor. Thereafter,
 3 back-dated documents were created virtually overnight, transferring ownership of Windsor from
 4 Kaye to Harkess in July 2003. This transfer of ownership of Windsor was relied on not only by
 5 Harkess, but by many other parties and attorneys, including a federal judge. The court finds that
 6 the transfer from Kaye to Harkess was effective to transfer ownership of Windsor to Harkess in July
 7 2003. The court further finds that, in any event, Quinn and those acting on his behalf are barred by
 8 the equitable doctrines of unclean hands and equitable estoppel from asserting ownership in
 9 Windsor. Any purported ownership claimed by James H. Smith ("Smith" herein) or Jeffrey
 10 Weinstein ("Weinstein" herein) is purely derivative based on their status as trustees of Trust, and the
 11 court has found that the Trust was not legally in existence during the time of the transfer from Kaye
 12 to Harkess.

14 FACTUAL BACKGROUND

15 There are many different companies and individuals involved in the various lawsuits here,
 16 in Ohio and elsewhere, but the essential entities for purposes of this lawsuit are Windsor, Sanitec
 17 Worldwide ("Worldwide" herein) and Sanitec Limited ("Limited" herein). Windsor is a California
 18 limited liability company formed on July 17, 2001. The undisputed evidence at trial was that,
 19 through a series of transfers and a corporate re-organization by Quinn, in late July 2001, Windsor
 20 became the sole owner of Worldwide. It was also undisputed at trial that Worldwide was the
 21 majority owner of Limited and that Mr. Weinstein's company, Salem Associates, owned a minority
 22 interest in Worldwide. (Ex. 189, 223) The basic premise argued by both parties at trial was that
 23 whoever owns Windsor controls the other two by virtue of this ownership structure.

24
 25 This court has been asked to make a ruling on a single, narrow question: who owns
 26 Windsor? The court is mindful that there are other lawsuits in Ohio, and perhaps elsewhere, which
 27 may be impacted by this decision, and that there may be issues between various parties impacted
 28 by what the court decides here. Beyond the findings that support the Court's decision, however,

1 this court makes no findings regarding the merits of any other lawsuits or any purported claims that
2 the parties may have against one another or others.

3
4 Plaintiff contends that he is the owner of Windsor by virtue of a transfer from Kaye, the
5 managing member of Windsor. Defendants contend that the Trust is the owner of Windsor.
6 Defendants presented evidence that in June 2002, defendant/cross-complainant Quinn was suffering
7 from a terminal illness and was facing an impending prison term, and therefore set up the Trust with
8 cross-complainant Smith and Weinstein as the trustees, and concurrently therewith transferred all
9 the assets of Windsor to Trust. Therefore, at the time of transfer of Windsor from Kaye to Harkess,
10 defendants assert that Windsor had already been transferred to the Trust and there was nothing to
11 transfer.

12 13 THE TRUST

14 The circumstances in existence in or about June 2002, that is the illness and the impending
15 sentencing, are consistent with a desire by Mr. Quinn to form a trust to hold his property. What is
16 missing, however, is a signed original trust document and any credible evidence that such a
17 document was ever signed by Quinn in June 2002, or at any time before he was released from prison
18 in late September 2003. Also, like the ownership structure that Quinn set up for Windsor, the
19 structure he set up for his Trust was also incomplete. The final, and necessary, steps were never
20 taken to consummate the Trust.

21
22 The court makes the following findings which support its conclusion that no Trust was
23 formed in June 2002 or at any time before the Kaye-Harkess transfer.

- 24
25 1. The court found Smith to be a credible witness, but by his own testimony and that of others,
26 he was only a figurehead. It was Weinstein that wrote all the letters for him to sign, and it
27 was Weinstein that monitored the litigation in Ohio. Virtually everything that Smith knew,
28 he knew because Weinstein told him. He had virtually no firsthand knowledge of facts.

1
2 2. There is no original Trust signed by Quinn which bears a date in June 2002. In fact, no
3 signed original at all was offered in evidence.

4
5 3. While there is evidence that the Litwin law firm prepared drafts of a trust in June 2002, and
6 Smith signed some version of a trust, Smith testified that he does not know whether Quinn
7 signed it. (Ex. 265)

8
9 4. Weinsten testified that he sent the Trust document which had been signed by others to
10 Quinn for him to sign. He did not see Quinn sign the Trust document. Weinsten claims that
11 he received a signature back from Mr. Quinn in June 2002, but the Court does not find this
12 claim credible in light of Mr. Weinsten's other testimony in depositions and pleadings
13 regarding ownership of Windsor (see below), and his prior conviction introduced for
14 purposes of impeachment. No one had personal knowledge about whether Quinn ever
15 signed before he was released.

16
17 5. Quinn testified that he did sign it in June 2002, but the court does not find his testimony to
18 be credible. On the stand Mr. Quinn repeatedly shifted responsibility for various actions
19 from himself to his attorneys, and said he would sign virtually anything his lawyers told him
20 to sign. This, along with his observed demeanor while testifying, and his two felony
21 convictions for fraud-related offenses, cause the court to disregard his testimony. Thus,
22 there is no independent, corroborating evidence that Quinn ever signed before he got out of
23 prison.

24
25 6. There is no credible evidence that shares or other indicia of ownership of Windsor were ever
26 transferred to the Trust.

27
28 7. Quinn testified that he fired Kaye as managing member of Windsor in June 2002 by letter,

1 but there is no evidence other than the testimony of Quinn himself that the letter was ever
2 sent, and court does not find his testimony credible. Kaye denies ever receiving it, and the
3 only copy introduced in evidence apparently came from Weinstein's file.
4

5 In addition to these points, Weinstein who along with Smith was a co-trustee, denied twice
6 in depositions in other cases that he knew who owned Windsor. One can infer from this that he
7 either knew the trust had never been signed by Quinn, or that there was never any transfer of
8 Windsor assets to the Trust. It was Weinstein who was monitoring the Ohio litigation and
9 apparently was concerned enough about protecting his 48% interest in Worldwide that he attempted
10 to intervene in the Ohio litigation. In several pleadings filed in connection therewith he never
11 mentioned the Trust. (Ex. 118, 122) Even when Smith sent the letter to John Climaco, Ohio
12 counsel for Limited, et al., he did not mention the Trust. And finally, the two independent
13 witnesses who may have been able to corroborate the Trust, attorney Litwin who drafted it, and
14 attorney Mark Geragos (who was allegedly present when the Trust was signed in his office) were
15 not called by the defendants to testify.
16

17 The defendants have not met their burden of showing that the Trust was legally formed and
18 in existence at the time of the Kaye-Harkess transfer.
19

20 THE TRANSFER TO HARKESS

21 By virtue of the failure of the Trust to be formed in June 2002, the assets of Windsor were
22 still in Windsor at the time of the transfer from Kaye to Harkess. In July 2003, never referencing
23 the Trust in his letter, Smith wrote to John Climaco, Esq., Ohio counsel for Limited and Windsor
24 ("Climaco" herein), claiming that Harkess had no authority to represent Limited in the Ohio
25 litigation and that he (Climaco) was discharged as counsel. (Apparently this was one of the letters
26 written for him by Weinstein.) (Ex. 210) In response to this letter Climaco sent an urgent message
27 to Babos demanding to know who had authority to speak for Limited and who he should listen to.
28 (Ex. 211.1, 212) He was obviously very agitated and wanted answers immediately. He was

1 particularly upset over the fact that he was being put in a position to embarrass himself before a
 2 federal judge. In response to that inquiry, within hours Babos, with the concurrence of Harkess and
 3 Kaye, created back-dated documents that showed that Harkess was the owner of Limited. (Ex. 168)
 4 Kaye (for Limited) and Harkess (for Sanitec West) had been managing the Ohio litigation and they
 5 needed to show they had authority to do so. (It is not altogether clear which parties Babos was
 6 actually representing as counsel in all these transactions; Climaco had repeatedly asserted that
 7 Quinn needed separate counsel due to a perceived conflict of interest; Babos had served as corporate
 8 counsel for some of the Sanitec companies and Quinn individually over the years.) (Ex. 212) These
 9 hastily created documents showed that Kaye, acting as managing member and owner of Windsor,
 10 transferred his member/owner status to Harkess. Babos continued to reaffirm that Harkess was the
 11 owner of Windsor for weeks after Quinn was released from prison in September 2003. He testified
 12 that it was only later he realized that he had made a mistake in having the documents prepared and
 13 started making efforts to reverse position. By then, however, the representations to the Ohio federal
 14 court and counsel had already been made and actions had been taken in reliance on Harkess'
 15 apparent authority to represent Limited, (based on his ownership of Windsor) and commitments had
 16 been made and documents signed.

17
 18 Quinn is responsible for creating the environment and business structure that made this
 19 possible. Windsor was formed on July 17, 2001, at Quinn's direction, with the filing of Windsor's
 20 Articles of Organization with the Secretary of State, showing Kaye as the manager. This was the
 21 only documentation for Windsor. Nowhere did Quinn's name appear. In late July 2001, he then
 22 asked Kaye to front for him in an attempt to sell Limited and in fact Kaye acted as managing
 23 member/owner in the Eden transaction and in dealing with Stericycle. He also was sent by Quinn
 24 to Limited back East to monitor operations and represent himself as the managing member of
 25 Windsor. Quinn claims that Kaye was only appointed to deal with specific sales or activities, but
 26 Quinn is the one who put him in a position to represent himself as owner of Windsor. It was Quinn
 27 who set up Windsor but never set up any formal ownership structure or had any documents prepared
 28 which identified him as being involved in Windsor. All of the assets that went through the various

1 re-organizations ended up in Windsor. Windsor became a holding company with no ownership
 2 structure, and no connection with Quinn. When it was to his advantage in having Kaye step
 3 forward for specified transactions that benefitted Quinn, he validates his authority. The court does
 4 not recognize, however, such selective delegations of authority, especially in a case where there is
 5 no documentation showing an owner of Windsor at all. Mr. Babos and Mr. Mitchell R. Miller (a
 6 corporation lawyer who drew up the Windsor documents for the Secretary of State) both testified
 7 that Quinn never set up any ownership structure because he wasn't sure how he wanted to do it.
 8 The only person placed in a position of apparent authority/ownership was Kaye. There is no
 9 evidence that either Quinn, or Babos or Miller did anything at all to remedy this uncompleted
 10 ownership structure after Quinn went to prison, thus enabling the later events to occur. The Court
 11 finds that Mr. Kaye was the sole managing member, and therefore sole owner, of Windsor Holdings
 12 from its inception in July 2001 through the transfer to Mr. Harkess in July 2003.

13
 14 When the Climaco emergency came, Mr. Kaye did not step forward to act as owner/
 15 manager, rather he wanted out, so it was agreed that he would transfer his member/owner status to
 16 Harkess. Rather than explain the dilemma to Mr. Climaco and seek a resolution with the Ohio
 17 court, counsel Babos, with the concurrence of Harkess and Kaye prepared the back-dated
 18 documents within a matter of hours and sent them to Climaco. Those documents were sent to Ohio
 19 with the knowledge that they were to be presented by Mr. Climaco, an officer of the court, to a
 20 federal judge representing that Mr. Harkess was the owner of Windsor. And then everyone sat back
 21 and allowed others to rely on that representation. This court finds that Mr. Harkess is the owner
 22 of Windsor and became the owner with the transfer from Mr. Kaye in July 2003. That entire chain
 23 of events was created by the anonymous and incomplete creation of Windsor by Quinn, and the
 24 attempt to selectively assign ownership/authority to Kaye.

25
 26 The court is mindful that defendant contends that there was an agreement that Harkess was
 27 only taking the shares of Windsor temporarily and that he was to give them back after Quinn was
 28 released. Mr. Babos supports this purported agreement, as does Quinn, but Harkess vehemently

1 denies it. There is evidence that Harkess said "If I own Limited by virtue of my ownership of
 2 Windsor, then I want the documents." This would suggest, however, that Harkess did indeed
 3 believe he owned Windsor although had some question as to what impact it had on ownership of
 4 Limited. Whether there was or was not such a private agreement between Quinn and Harkess is
 5 between them. As far as the rest of the world is concerned, Mr. Kaye transferred ownership of
 6 Windsor to Harkess and Harkess, Kaye and Babos represented to the federal court and the litigants
 7 that Harkess was the owner of Windsor. The transfer to Harkess was effective.

8 9 UNCLEAN HANDS AND EQUITABLE ESTOPPEL

10 Further, in the exercise of its equitable powers, this court will not permit Quinn to now
 11 assert an ownership interest in Windsor. Plaintiff spent a great deal of the trial laying out the series
 12 of transactions involving the original purchase of Limited by Quinn with investor money and the
 13 use of various corporations to do so. Plaintiff made the point that Mr. Quinn's name personally did
 14 not appear on any of the documentation of these companies. For the most part the court found that
 15 to be true, based on the limited evidence presented on those issues. This court is being asked to take
 16 note of a pattern of ownership and apparent evasion of accountability to creditors and suppression
 17 of identity in order to establish the defense of unclean hands. This court is not making any findings
 18 as to whether Mr. Quinn defrauded the original investors in connection with his use of their funds
 19 to purchase Limited. This court does take note, however, of this trail of companies, re-
 20 organizations and the resultant anonymity of Quinn for purposes of whether Quinn was attempting
 21 to hide his assets, (i.e., Windsor's controlling interest in Worldwide and through Worldwide,
 22 ownership of Limited) in order to avoid any claims these investors might have, and comes before
 23 this Court with unclean hands. The court also takes note of the fact that Quinn never used any of
 24 his own money to purchase these companies. The court did not find credible his testimony that he
 25 also put his own money into Limited from the sale of luxury cars. No documentary or other
 26 evidence was presented to support that assertion.

27

28 All of this is corroboration for the testimony of Mr. Quinn himself. Quinn testified on the

1 stand that he created Windsor to "keep the assets of Sanitec away from Barbara Sager, Steve Ventre,
 2 Joe Delloiacovo and the investors in Ohio that were laying claim to those assets." He further
 3 testified that he asked Mr. Kaye to be the managing member because he was "having difficulties"
 4 and "troubles" at the time. It is clear that Quinn did not want his assets in his own name and in fact
 5 his apparent 80% interest in Sanitec West was in the name of his friend Mary Reidiger rather than
 6 himself. This is sufficient evidence for the court to conclude that Quinn was secreting his assets
 7 to defeat the claims of his creditors and that he comes to this court with unclean hands. (See
 8 Allstead vs. Laumeister (1911) 16 Cal.App. 59 and Belling vs. Croter (1943) 57 Cal.App.2d 296.)

10 In addition, the court invokes the doctrine of equitable estoppel. While Mr. Quinn himself
 11 did not make the representations to those who relied and acted on them (the Ohio federal court and
 12 counsel and others related to that litigation), he is directly responsible for setting in motion the chain
 13 of events that led to those representations. He put Kaye and Harkess in the position of having
 14 apparent authority for and ownership of Windsor, from the point of view of the court and the parties
 15 in the East, to accomplish his own ends of selling off Limited without having his name in any way
 16 associated with the sale. Many have relied on the resulting representations about Harkess'
 17 ownership of Windsor to their potential detriment in the event that transactions consummated in
 18 reliance thereon were to be overturned. Quinn is estopped from now claiming that the
 19 representations regarding ownership of Windsor are false, or that Kaye did not have authority to
 20 transfer the company to Harkess.

22 Plaintiff/Cross-Defendant Harkess to prepare the judgment consistent with this Tentative
 23 Ruling. This Tentative Ruling shall be the Statement of Decision unless within ten days either party
 24 specifies controverted issues or makes proposals not covered in the Tentative Ruling.

JRD:cr
 Harkess.sd
 8/18/05

26 Dated: AUG 18 2005

JAMES R. DUNN

JAMES R. DUNN
 Judge of the Superior Court

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PROOF OF SERVICE

I, Yolanda S. Ramos, declare:

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is c/o Weston Benshoof Rochefort Rubalcava & MacCuish LLP, 333 South Hope Street, Sixteenth Floor, Los Angeles, California, 90071. I am over the age of eighteen years and not a party to the action in which this service is made.

On October 24, 2005, I served the document(s) described as NOTICE OF ENTRY OF FINAL JUDGMENT IN FAVOR OF JAMES HARKESS on the interested parties in this action by enclosing the document(s) in a sealed envelope addressed as follows:

SEE ATTACHED SERVICE LIST

☒ BY MAIL: I am "readily familiar" with this firm's practice for the collection and the processing of correspondence for mailing with the United States Postal Service. In the ordinary course of business, the correspondence would be deposited with the United States Postal Service at 333 South Hope Street, Los Angeles, California 90071 with postage thereon fully prepaid the same day on which the correspondence was placed for collection and mailing at the firm. Following ordinary business practices, I placed for collection and mailing with the United States Postal Service such envelope at Weston Benshoof Rochefort Rubalcava & MacCuish LLP, 333 South Hope Street, Los Angeles, California 90071.

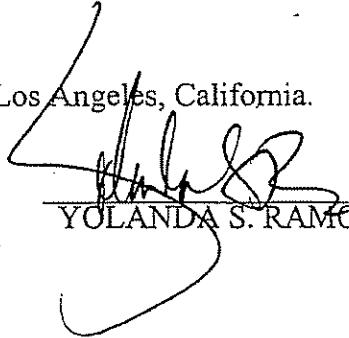
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☐ BY FACSIMILE: I telecopied a copy of said document(s) to the following addressee(s) at the following number(s) in accordance with the written confirmation of counsel in this action.

☒ [State] I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

☐ [Federal] I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 24, 2005, at Los Angeles, California.


YOLANDA S. RAMOS

Harkess v. Quinn, et al.
Los Angeles Superior Court, Case No. BC 311681

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